

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ALTACORP CAPITAL INC. (n/k/a ATB Capital
Markets Inc.).

Plaintiff,

- against -

FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC., FINRA REGULATION,
INC. F/K/A FINRA DISPUTE RESOLUTION,
INC., JOHN C.T. CLOGHESY,

Defendants.

Case No.: 20 Civ. 5221 (PAE)

CONSENT ORDER

WHEREAS Plaintiff AltaCorp Capital Inc. (“AltaCorp”) commenced this action by filing a Complaint on July 7, 2020 (“Complaint”);

WHEREAS Defendants Financial Industry Regulatory Authority, Inc. and Finra Regulation, Inc. (together, “FINRA”) dispute the claims made in the Complaint;

WHEREAS FINRA and AltaCorp seek to resolve this action as between them;

WHEREAS there is a pending arbitration captioned *John C.T. Cloghesy v. AltaCorp Capital (USA) Inc. and AltaCorp Capital Inc.* (FINRA Dispute Resolution Arbitration Number 19-01557) (the “Arbitration”), in which Cloghesy has made various claims against AltaCorp and its subsidiary AltaCorp Capital (USA) Inc. (the “Claims”);

WHEREAS the Panel presiding over the Arbitration issued an order on June 30, 2020 (the “Order”) finding that (i) AltaCorp is not a FINRA member under FINRA Rule 13200; (ii) AltaCorp did not voluntarily submit to the Arbitration; (iii) the Panel did not have jurisdiction over the Claims against AltaCorp; and (iv) that AltaCorp is not now a party to the Arbitration;

WHEREAS, pursuant to the Order, FINRA does not deem AltaCorp a party to the Arbitration;

WHEREAS Cloghesy filed an action in Colorado and a counterclaim and motion in this action seeking to compel AltaCorp to arbitrate the Claims in the FINRA forum;

WHEREAS AltaCorp has responded in the Colorado action and sought to dismiss it on several grounds, and otherwise denies that it should be compelled to arbitrate the Claims; and

WHEREAS FINRA takes no position on, and is entirely neutral with respect to the disputes between Cloghesy and AltaCorp, including with respect to the merits of Claims, the Colorado action, and any related disputes regarding the Arbitration or the arbitrability of the Claims asserted in this action;

IT IS HEREBY STIPULATED AND AGREED, between the undersigned parties that:

1. AltaCorp is not a FINRA member.
2. AltaCorp has not elected, consented, or volunteered to participate in the Arbitration.
3. Pursuant to the Order, AltaCorp is not a party to the Arbitration and will not be a party to the ongoing Arbitration absent a court order directing otherwise.
4. AltaCorp currently owes no arbitration fees to FINRA relating to the Arbitration.
5. Consistent with the above, FINRA shall not administer the Arbitration with respect to AltaCorp as a party, absent a court order directing otherwise.
6. AltaCorp hereby withdraws its motion for a preliminary injunction as against FINRA and dismisses the Complaint as to FINRA, without prejudice.

7. AltaCorp enters into this stipulation without waiver of any of its defenses or rights to challenge the arbitrability of the Claims, to seek an order enjoining AltaCorp's participation in the Arbitration, or similar relief.

8. FINRA will abide by the orders of this Court regarding the Arbitration.

9. FINRA and AltaCorp will each bear their own fees and costs with respect to this action. AltaCorp, however, reserves its rights to seek monetary damages, fees, costs and any other relief against Cloghesy.

Dated: August 18, 2020

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*Attorneys for Plaintiff AltaCorp Capital Inc. (n/k/a
ATB Capital Markets Inc.)*

SO ORDERED:



Hon. Paul A. Engelmayer, U.S.D.C.J.

August 19, 2020